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DISPATCHED BY
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)
)
 Amendment of Section 76.51) CS Docket No. 95-139
 of the Commission's Rules)
 to Include Fayetteville, North)
 Carolina, in the Raleigh-Durham-)
 Goldsboro Television Market)

MEMORANDUM OPINION AND ORDER

Adopted: April 9, 1996

Released: April 15, 1996

By the Deputy Chief, Cable Services Bureau:

1. Before the Commission is the *Notice of Proposed Rule Making* in the captioned proceeding,¹ issued in response to a joint petition filed by Capital Cities/ABC, Inc., licensee of television station WTVD(TV), channel 11, Durham, North Carolina; Capitol Broadcasting Company, Inc., licensee of television station WRAL(TV), channel 5, Raleigh, North Carolina; Delta Broadcasting, Inc., licensee of television station WKFT(TV), channel 40, Fayetteville, North Carolina; FSF TV, Inc., licensee of television station WRDC(TV), channel 28, Durham, North Carolina; and Paramount Stations Group of Raleigh Durham Inc., licensee of television station WLFL(TV), channel 22, Raleigh, North Carolina (collectively "Petitioners"). The *Notice* proposed to amend Section 76.51 of the Commission's Rules,² to change the designation of the "Raleigh-Durham-Goldsboro" North Carolina television market to "Raleigh-Durham-Goldsboro-Fayetteville." No comments in opposition to this proposal have been filed.

BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine the scope of territorial exclusivity rights that television broadcast stations may purchase and, in addition, may help define the scope of compulsory copyright license liability for cable operators in certain circumstances.³ Certain cable television syndicated exclusivity and network nonduplication rights are also determined by the presence of broadcast station

¹ 9 FCC Rcd 4398 (1994).

² 47 C.F.R. §76.51.

³ See 47 C.F.R. §73.658(m) and 17 U.S.C. §111(f).

communities of license on this list.⁴ Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.⁵ Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.⁶

3. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),⁷ which amended Section 614 of the Communications Act of 1934, as amended ("Act"),⁸ requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules.⁹

RULE MAKING COMMENTS

4. The petitioners contend that WKFT in Fayetteville competes directly with television stations in the Raleigh-Durham-Goldsboro market for audience share and advertising revenues. Although Fayetteville is located inside the Raleigh-Durham-Goldsboro "area of dominant influence" ("ADI"), the petitioners argue that because Fayetteville is not a designated community in the above market, WKFT is considered a "distant signal" for purposes of compulsory copyright license liability if carried on cable systems more than 35 miles from Fayetteville. According to the petitioners, the consequence of being classified as a "distant signal" is that cable systems will have to pay significant copyright royalties in order to carry WKFT, and WKFT, in turn, will have to indemnify the cable systems for these royalties. In contrast, stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-miles zones of the listed communities in a given hyphenated market and are not subject to copyright liability. The petitioners assert that because WKFT may have to pay copyright fees attendant to its carriage as a "distant signal" that stations in Raleigh, Durham and Goldsboro do not, WKFT is disadvantaged in its competition with these stations.

5. In support of its proposal, the petitioners state that it meets all of the criteria stipulated by the Commission for redesignation of the hyphenated market. The petitioners contend that Fayetteville is sufficiently proximate to Raleigh, Durham and Goldsboro to be considered part of the Raleigh-Durham-Goldsboro market. According to the petitioners, Fayetteville is located

⁴ See 47 C.F.R. Part 76, subpart F.

⁵ See *CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974).

⁶ *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

⁷ Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁸ 47 U.S.C. §614.

⁹ See Section 614(f) of the Act.

approximately 59 miles southwest of Raleigh and 72 miles south of Durham. Cumberland County in which Fayetteville is located is now the second largest county in the Raleigh-Durham-Goldsboro television market and contains 12 percent of the market's television households. The petitioners maintain that because of this geographic proximity, Fayetteville, Raleigh, Durham and Goldsboro have shared economic, social and cultural interests which link them together as a single television market. The petitioners submit a map which depicts the geographical proximity of the cities. To further support its contention that WKFT competes directly with Raleigh-Durham-Goldsboro market stations and is an integral part of the Raleigh-Durham-Goldsboro ADI, the five petitioning stations, WRAL (CBS) and WLFL (Fox) licensed to Raleigh, WTVD (ABC) and WRDC (NBC) licensed to Durham, and WKFT (Ind.) licensed to Fayetteville, assert that WKFT is widely recognized as a Raleigh-Durham-Goldsboro market station. Raleigh, Durham and Goldsboro newspapers recognize WKFT, Fayetteville, in the television listings for the Raleigh-Durham-Goldsboro area, and newspapers in Fayetteville include the Raleigh-Durham-Goldsboro television stations in their television listings. In addition, the petitioners state that WKFT carries exclusive broadcast of the highly rated series "Murphy Brown" or "Married With Children" or other programs in syndication. The petitioners urge the Commission to add Fayetteville to the Raleigh-Durham-Goldsboro market in order to redress what the petitioners perceive as a competitive imbalance between WKFT and stations licensed to Raleigh, Durham and Goldsboro.

DISCUSSION

6. A "hyphenated market" has been described by the Commission as a television market that contains more than one major population center supporting all stations in the market, with competing stations licensed to different cities within the market area.¹⁰ In evaluating past requests for hyphenation of a market, the Commission has considered the following as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area;¹¹ (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change.¹² Each of these factors helps the Commission to evaluate individual market conditions consistent

¹⁰ *Cable Television Report and Order*, 36 FCC 2d 143, 176 (1972).

¹¹ This concern -- that cable carriage might be provided in areas beyond a station's Grade B signal contour -- has reduced relevance under the must-carry rules included in the 1992 Cable Act which are based on "Area of Dominant Influence" geographic market areas rather than on Grade B contours.

¹² See e.g., *Fresno-Visalia, California*, 57 R.R. 2d 1122, 1124 (1985); *TV 14, Inc. (Rome, Georgia)*, 7 FCC Rcd 8591 (1992).

"with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."¹³

7. Based on the facts presented here, we believe that a case for redesignation of the subject market has been set forth so that this proposal should be adopted. It appears from the information before us that television stations licensed to Raleigh, Durham, Goldsboro and Fayetteville do compete for programming, audience and advertisers in the proposed combined market area, and that sufficient evidence has been presented to demonstrate commonality between the proposed community to be added to the market designation and the market as a whole. In addition, no oppositions to the proposed re-hyphenation have been filed.

8. We note that the issue raised by the petitioners regarding WKFT's copyright license liability has largely been resolved with the passage of the Satellite Home Viewer Act of 1994¹⁴, which amended Section 111(f) of title 17, United States Code.¹⁵ Under this Act, a station located within the same ADI as a cable system is no longer considered a "distant signal" on that system for purposes of compulsory copyright license liability and, therefore, is not subject to the additional copyright fees attendant to "distant signal" carriage within the market.¹⁶ Applying the Act to the facts of this proceeding, WKFT would not be considered a "distant signal" if carried on cable systems located in the Raleigh-Durham-Goldsboro ADI and, therefore, would not face additional copyright fees relative to other stations located within the same ADI. Nevertheless, we find that the equalization of the regulatory status of WKFT with stations in Raleigh, Durham and Goldsboro through the inclusion of Fayetteville as a named community in the market is warranted given that WKFT competes with these stations for programming, audience and advertisers. Such a rationalization of the competitive situation appears to be the public benefit which congress anticipated by instructing the Commission, in Section 614(f) of the Cable Television Consumer Protection and Competition Act of 1992, to make necessary revisions to update the market list.

9. This proceeding is not intended to address the specific mandatory cable carriage, syndicated exclusivity or network nonduplication obligations of individual cable systems. Redesignation of the market reflects in the rules the general competitive situation that in fact exists in the local area, allowing the application of the more specific rules, including those

¹³ See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). See, also, *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

¹⁴ Satellite Home Viewer Act of 1994, P.L. 103-369, 108 Stat. 3477 (1994).

¹⁵ 17 U.S.C. §111(f). Public Interest Corporation filed its petition for rule making to amend Section 76.51 of the Commission's Rules on December 16, 1993, prior to the passage of the Satellite Home Viewer Act which was signed into law on October 18, 1994.

¹⁶ 108 Stat. 3481.

relating to "area of dominant influence" changes, to be addressed from the perspective of a properly defined market area. Accordingly, the proposed rule change will be adopted.

10. Accordingly, IT IS ORDERED, that effective [30 days after publication in Federal Register], Section 76.51 of the Commission's Rules IS AMENDED to include Fayetteville, North Carolina, as follows:

Raleigh-Durham-Goldsboro-Fayetteville, North Carolina

11. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

12. This action is taken by the Cable Services Bureau pursuant to authority delegated by Section 0.321 of the Commissions rules. 47 C.F.R. §0.321. For additional information on this proceeding, contact Vanessa Stallings (202) 416-0800.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
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